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IN THE

Supreme Court of the United States

Nos. 16, 17, 18—OCTOBER TERM, 1930

STATE OF FLORIDA *and* A. S. WELLS, E. S. MATHEWS, *et al*,
Appellants
vs
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *et al.*

BROOKS-SCANLON CORPORATION, WILSON CYPRESS COMPANY, *and* CUMMER CYPRESS COMPANY,
Appellants
vs
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *et al.*

WILSON LUMBER COMPANY OF FLORIDA,
Appellant
vs
UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, *et al.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION BY ATLANTIC COAST LINE RAILROAD CO. *and* GEORGIA PUBLIC SERVICE COMMISSION

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TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Atlantic Coast Line Railroad Company, one of the appellees in the above mentioned cases, respectfully avers:

1.

That heretofore on the 5th of January, 1931, this Court handed down its opinion reversing the decree of the United States District Court for the Northern District of Georgia, specially organized in the manner provided by the statutes.

2.

The subject matter of that litigation was an order of the Interstate Commerce Commission fixing rates for the intrastate transportation of logs over the Atlantic Coast Line Railroad Company for distances up to 170 miles in the State of Florida. The District Court in its aforementioned decree upheld the order of the Commission and the said order went into effect on the 8th day of February, 1929.

3.

In its opinion this Court states:

> "The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (The Beaumont, Sour Lake & Western Railway Company v. United States, decided November 24, 1930, 282 U. S.....), but of the

lack of the basic or essential findings required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make findings for the Commission but to ascertain whether its findings are properly supported. If the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates in order to end an unjust discrimination as against interstate commerce either as between persons and localities, or because of an undue burden upon the revenues of the carrier, the Interstate Commerce Commission is still at liberty, acting in accordance with the authority conferred by the statute, to make such determinations as the situation may require."

4.

Atlantic Coast Line Railroad Company respectfully represents that after the 8th day of February, 1929, the said effective date of the Commission's order, certain of the appellants stopped, or practically stopped, shipping logs of the kind involved in this proceeding over the lines of the Atlantic Coast Line Railroad Company in intrastate commerce in Florida, but the Wilson Cypress Company continued to ship in large quantities from the northwestern part of the peninsula of the State of Florida from and near the station known as Hines, on the Perry branch of this movant's lines, to its mills at Palatka, which is on or near the eastern coast of the State, in Putnam County, a distance of about 94 miles south of the Georgia-Florida State line and about 120 miles from the point of origin.

Those shipments amounted to approximately 6,550 carloads up to the first day of January, 1931, and like shipments are continuing.

5.

Movant represents that evidence before the Interstate Commerce Commission, which was considered by the Commission, was, in movant's opinion, entirely sufficient to justify findings of fact by the Commission showing unlawful discrimination against persons, places and particular classes of traffic; and that it was, in movant's opinion, also sufficient to justify findings of additional facts to comply with the requirements of the law as stated in this Court's said opinion as to discrimination against general interstate commerce.

6.

Movant represents that it is to the interest of justice that the status fixed by the Commission's order, which has been in effect from the 8th day of February, 1929, as aforesaid, be maintained until the Commission has again considered the record and the cause in the light of this Court's said opinion. It is likely that, if the Court's order becomes effective without further hearing and action by the Commission, it may bring a demand against the Atlantic Coast Line Railroad Company for substantial reparations, and that a failure to have further determination of the subject matter by the Commission may do this movant a great injustice for which there will be no relief, and in the meantime the rates here involved will continue to be an unjust discrimination against interstate commerce and against persons and places and particular classes of traffic, thereby

working irreparable damage not only to this movant but to the public.

7.

Movant avers its willingness to enter into bond, with satisfactory surety, conditioned that it will hold harmless the appellants, or either of them, or any shipper who may be injured or damaged by the direction of the Court herein prayed for; or otherwise conditioned as may be by the Court deemed proper.

8.

Movant cites as authority for the granting of the relief here prayed:

Rule 34, Judicial Code 1928, §377;

Ex Parte The Milwaukee Railroad Co., 5th Wall. 188;

Smith vs. Illinois Bell Telephone Co., decided Dec. 1, 1930, U. S. Sup. Ct. Advance Opinions 1930-1931, Vol. 3, pp. 99, 112;

Watts, Watts & Co. vs. Unione Austriaca, 248 U. S., 9-21.

WHEREFORE, this movant prays:

1. That an order be entered staying the sending down of the mandate in this case;

2. That notice of this motion be given to the other parties to this cause and that they be required to show cause, if any they have, why the prayers of this motion should not be granted;

3. That this Court enter such order as it may deem wise, either staying the mandate in this Court until the Commission

has acted in this cause in the light of the opinion of this Court entered therein, or until this Court shall, for cause shown, otherwise direct; or

4. That this Court, in sending down its mandate to the District Court for the Northern District of Georgia, direct the said Court to maintain the status as to the said intrastate rates now existing until the said Commission shall have acted or until the said Court, for cause shown, shall have otherwise ordered.

5. Movant prays for such further and other orders as the Court may deem appropriate.

Respectfully submitted,

ATLANTIC COAST LINE RAILROAD COMPANY,

By Robert C. Alston
of Counsel

F. B. GRIER,
CARL H. DAVIS,
W. E. KAY,
ROBERT C. ALSTON,
BLAIR FOSTER,

Attorneys for Atlantic Coast Line Railroad Company.

UNITED STATES OF AMERICA
STATE OF GEORGIA
COUNTY OF FULTON

Before me, the undersigned officer, duly authorized to administer oaths in said State and County, personally appeared .....Robert C. Alston....., who being by me duly sworn deposeth and saith on oath that he is counsel for the Atlantic Coast Line Railroad Company and as such is familiar with the matters and things involved in the foregoing motion and is authorized to make this affidavit. Deponent says that the matters and things therein set out, where stated as matters of fact, are true, and, where stated as matters of opinion, he verily believes them to be true.

.....Robert C Alston.....

Sworn to and subscribed before me,
this..21..day of January, 1931.

Copy

.....Margery Davenport.....
Notary Public, Georgia, State at Large.
My Commission Expires Dec. 26, 1932

IN THE

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MOTION BY GEORGIA PUBLIC SERVICE COMMISSION

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Georgia Public Service Commission, one of the appellees in the above entitled cases, respectfully shows:

1.

The proceedings before the Interstate Commerce Commission, out of which grew the subject matter of this litigation, were had on the petition (R. 193) of this movant, which is the duly constituted authority established by the State of Georgia having regulatory jurisdiction over carriers by railroad in Georgia. Before filing said petition, this Commission had undertaken to fix reasonable rates for intrastate transportation of logs of the description involved in these cases and found it impracticable to do so because of the extraordinary conditions in the transportation of such logs in intrastate in Florida. After undertaking to amicably adjust said conditions, the petition was filed and the proceedings had as shown by the record which has been presented to this Court.

2.

Movant is informed of the motion which is being made by the Atlantic Coast Line Railroad Company requesting the stay of the mandate of this Court while this cause is being resubmitted to the Interstate Commerce Commission and is being acted upon by it, in accordance with this Court's said opinion, which was handed down on the 5th day of January, 1931, or that this Court, in issuing its mandate, give direction to the District Court

of the United States for the Northern District of Georgia, to the end that said Court may, by proper orders, protect the present status pending the proceedings before the Interstate Commerce Commission, or until the further order of this Court. This movant respectfully represents that, in its opinion, this, or some other direction equivalent thereto, should be given.

3.

The opinion of this Court indicates that there should be further consideration by the Interstate Commerce Commission.

4.

The Interstate Commerce Commission's order went into effect on the 8th day of February, 1929, and, if that status is interrupted, it may have the effect of restoring the intrastate rates originally complained of. The said rates set aside by the order of the Interstate Commerce Commission have not only deterred this movant in the exercise of its rate-making functions as to intrastate rates in Georgia on such logs, but they are unreasonable and work a destructive and unjust discrimination as to persons, places and particular classes of traffic, and as well against general interstate commerce. The Interstate Commerce Commission, after long hearing, has so found and ordered, but its order was not supported, as this Court has determined, by findings sufficiently definite.

In the opinion of this movant, the record already presents ample evidence to justify findings by the Interstate Commerce Commission of discrimination against persons, places and particular classes of traffic, and also generally against interstate

commerce, fully complying with the requirement of this Court's opinion.

This movant respectfully prays that the relief sought in the motion of the Atlantic Coast Line Railroad Company be granted.

Respectfully submitted,

GEORGIA PUBLIC SERVICE COMMISSION,

By ..... Jas. A. Perry .....
Chairman.

UNITED STATES OF AMERICA
STATE OF GEORGIA
COUNTY OF FULTON

Before me, the undersigned officer, duly authorized to administer oaths in said State and County, personally appeared JAS. A. PERRY, who being by me duly sworn deposeth and saith on oath that he is Chairman of the Georgia Public Service Commission; that he is familiar with the matters and things set out in the foregoing motion and that the same are true, except where stated upon information and belief, and those he verily believes to be true.

..... Jas. A. Perry .....

Sworn to and subscribed before me,
this 21 day of January, 1931.

copy

Margery Davenport
Notary Public, Georgia, State at Large
My Commission Expires Dec. 26, 1932